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Attorneys for Defendant  
United States of America

Attorneys for Federal Defendants.

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CALIFORNIA COALITION FOR WOMEN  
PRISONERS; R.B.; A.H.R.; S.L.; J.L.; J.M.;  
G.M.; A.S.; and L.T., individuals on behalf of  
themselves and all others similarly situated,

Plaintiffs  
v.

UNITED STATES OF AMERICA FEDERAL  
BUREAU OF PRISONS, a governmental entity;  
BUREAU OF PRISONS DIRECTOR  
COLETTE PETERS, in her official capacity;  
FCI DUBLIN WARDEN THAHESHA JUSINO,  
in her official capacity; OFFICER  
BELLHOUSE, in his individual capacity;  
OFFICER GACAD, in his individual capacity;  
OFFICER JONES, in his individual capacity;  
LIEUTENANT JONES, in her individual  
capacity; OFFICER LEWIS, in his individual  
capacity; OFFICER NUNLEY, in his individual  
capacity; OFFICER POOL, in his individual  
capacity; LIEUTENANT PUTNAM, in his  
individual capacity; OFFICER SERRANO, in  
his individual capacity; OFFICER SHIRLEY, in  
his individual capacity; OFFICER SMITH, in his  
individual capacity; and OFFICER VASQUEZ,  
in her individual capacity,

Defendants.

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CASE NO. 4:23-CV-04155-YGR

**FEDERAL DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' ADMINISTRATIVE MOTION  
TO FACILITATE TELEPHONIC  
ATTENDANCE AT THE PRELIMINARY  
INJUNCTION HEARING**

Judge: Hon. Yvonne Gonzalez Rogers  
Date: December 11, 2023  
Time: 3:00 p.m.  
Crtrm: ZOOM

Trial Date: None Set

Pursuant to USDC Civil L.R. 7-11(b), the United States respectfully requests that this Court deny Plaintiffs' eleventh-hour request for FCI Dublin to "facilitate a method for incarcerated putative class members to telephonically attend the hearing for preliminary injunction on December 11, 2023 at 3:00 p.m." (Doc. 59 at 2.) Plaintiffs have made this request far too late – just days before the hearing. The lateness of the request deprives the United States of any meaningful opportunity to confer with BOP and file a proper response. It also deprives this Court of any meaningful opportunity to review the briefs and analyze the arguments. The lateness and nature of the request also prevents FCI Dublin from altering schedules and existing programming to accommodate the meeting, let alone reassigning staff as necessary to ensure security and safety of inmates and staff. Plaintiffs should have made this request many weeks ago. The Court should reject the request at this late juncture.

# **I. ARGUMENT**

As Plaintiffs note in their administrative motion, this Court issued an order setting the hearing on their motion for a preliminary injunction via zoom on October 26, 2023. (Docs. 59 at 2, 38.) Forty-one days later, and three business days before the hearing, Plaintiffs filed the instant motion requesting that FCI Dublin facilitate telephonic attendance at this hearing for an unidentified and unquantified number of inmates. The inmates are not participating in the hearing and wish to remain anonymous. The undersigned was in the process of responding to Plaintiffs' counsel with details as to why FCI Dublin cannot accommodate this request when Plaintiffs filed their administrative motion.

Plaintiffs incorrectly assume that "[f]acilitating telephonic access to this hearing is reasonable and feasible for FCI Dublin." (Doc. 52 at 3.) They state Dublin staff "could either ensure that phones are able to dial out to the number provided by the Court and suspend time limits, or the prison could facilitate broadcasting the hearing in a room, such as a classroom or in the large visiting room spaces, that individuals can choose to attend in order to listen if they wish to do so." (*Id.*) They state that "[t]hose incarcerated at FCI Dublin should have *at least* the same access as the public to listen to this hearing given its impact on them." (*Id.* (emphasis added).) They identify as interested parties, "[t]hese individuals," meaning all those incarcerated at FCI Dublin, "including named Plaintiffs," (there are eight), "CCWP members," (an undefined and virtually unlimited number), "and declarants" (there are

forty-seven). (*Id.*) FCI Dublin currently has a population of 719 inmates, including 127 at the Camp.<sup>1</sup> Accommodating a request that would allow every single one of these 719 individuals, if interested, to either utilize phones at 3:00 p.m., or be set up in a physical space capable of both holding that many inmates and broadcasting a live Court proceeding would create an immediate safety and security concern for inmates and staff alike. Even attempting to accommodate this request would disrupt programming and normal movement scheduled at FCI Dublin during that time, such as inmate movement to Mainline for dinner, which happens at the same time as this hearing, and staff shift changes, which also happens just prior to the hour of the hearing.

Each of the individually named Plaintiffs, as well as CCWP members, are represented by counsel who will be present at the hearing. They will not be prejudiced by not attending the live hearing, as they will have an opportunity to debrief with counsel following the hearing by phone or in-person visitation. They can also review transcripts and filings. The reality is that those incarcerated do not have the same access as the public to listen to Court proceedings, unless they have a constitutional right to be present. *Hernandez v. Whiting*, 881 F.2d 768, 770 (9th Cir. 1989) (in civil actions, “imprisonment suspends the plaintiff’s usual right to be personally present at judicial proceedings brought by himself or on his behalf.”); *Moaddab v. Cnty. of Orange*, 816 F. App’x 122, 123 (9th Cir. 2020) (same) (cited for persuasive value). Even in cases where there is a right to notice set by statute, for example under the Class Action Fairness Act, courts have recognized the inability for federal prisons to provide a practical and safe way for large numbers of a generalized putative class to personally observe or participate in oral hearings. *See Garries, et al v. Milusnic, et al*, Case No. 2:20-cv-04450-CBM-PVCx, Docs. 443 at 6-7 and 444 (citing unmanageable safety concerns).

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<sup>1</sup> FCI Dublin, <https://www.bop.gov/locations/institutions/dub/>, accessed December 8, 2023.

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2 WHEREFORE, the government respectfully requests that the Court deny Plaintiffs'  
3 Administrative Motion.

4 JESSE A. LASLOVICH  
5 United States Attorney

6 /s/ Madison L. Mattioli  
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